

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Mail Classification Schedule

Docket No. RM2011-8

PUBLIC REPRESENTATIVE COMMENTS
ON NOTICE OF PROPOSED RULEMAKING CONCERNING
MAIL CLASSIFICATION SCHEDULE
(March 24, 2011)

I. INTRODUCTION

By Order No. 666, the Commission issued a Notice of Proposed Rulemaking establishing this docket to consider modifications to its rules governing the Mail Classification Schedule (MCS) together with proposed MCS language for all postal services.¹

As described in the Notice, the proposed changes to the MCS are the culmination of a series of formal Commission requests and Postal Service filings proposing product lists and descriptive language for individual products comparable to the material in the Domestic Mail Classification Schedule (DMCS) as well as draft material prepared by the Commission describing each product. The proposed rule includes price and classification changes as of December 31, 2010 and will include any rate or classification changes approved by the Commission occurring prior to issuing the final rule.

¹ Notice of Proposed Rulemaking Concerning Mail classification Schedule (Notice), February 7, 2011. A placeholder is included in the MCS for nonpostal services.

Comments are requested by March 24, 2011 as to whether the Commission should incorporate by final rule the proposed modifications adding product descriptions and rates and conforming changes into the Commission's rules at 39 CFR 3020, Subpart A-Mail Classification Schedule.

The rules for the MCS product list will continue to appear in 39 CFR Part 3020 from §3020.1 through §3020.5. The proposed rules for Part 3020 consist of only four short sections explaining the rules' applicability, format, publication, and notices together with an extensive §3020.5 divided into several parts containing the contents of the material comprising the MCS. The rule in §3020.1 describes the rule's applicability to establishing product lists; §3020.2 contains a general summary of the MCS; §3020.3 provides for publication of the MCS; §3020.4 provides for notices of changes in the MCS list; and §3020.5 describes generally the contents of the MCS consisting of several parts as described in subsections 3020.5(b)-(h). Section 3020.5(b) provides for a Revision History of updates to the MCS to comply with statutory requirement. A list of Postal Service trademarks comprise subsection 3020.4(c) and a Table of Contents listing classes of service and all Market Dominant and Competitive products is in subsection 3020.5(d). A list of products similar to the Table of Contents but with additional subcategories of products is included in subsections 3020(e)-(f). Subsection 3020(g) and (h) provide for a Glossary of Terms and Conditions, and Country Price Lists for International Mail, respectively.

II. COMMENTS

The Public Representative's review and comments focus on the text of proposed rules 3021.1 through 3020.5 and the general format and presentation of Appendices A-D in section 3020.5 rather than examining for accuracy all of the MCS language describing each product and price category. The latter product and price category material was proposed by the Postal Service and has been reviewed several times prior to this notice of rulemaking.

The proposed structure of the material in the Appendices presenting the product descriptions and prices is clear and will provide interested persons the information necessary to determine mail classification provisions and requirements as well as pricing and changes as they occur.

A. CONVENIENCE OF WEBSITE PAGE HEADINGS AND SECTIONING

The Commission website MCS version is more easily scanned to locate products than the pages in the CFR version. Appendices A and B for Market Dominant and Competitive product descriptions represent a massive first time undertaking that has required years to complete. The MCS classification and pricing material including formatting, arrangement, descriptions and tables on the Commission's website are easily referenced and readily understood. The website simplifies use and eases the burden on those who wish to print copies of individual classes or products. The website version provides at the top of each page the class and product on that page. In addition, the website version appears to section off each product so that each product starts on a separate page. This formatting will be helpful to users and is an improvement over the CFR version.

Below, a few clarifications and changes in the proposed rules are suggested for the Commission's consideration.

B. UPDATING THE MCS

1. The Commission proposes two MCS versions: an accessible Commission website version and a like CFR version but with different organization and appearance. In the event inadvertent substantive differences appear, the CFR version is controlling. Notice at 4, note 5. Although the CFR will take precedence when it differs from the Commission's website, it must be clearly stated that the website may properly differ from the CFR resulting from the more frequent updates of the website after the cut-off date for materials provided in the CFR publication. Thus, the CFR will take precedence over the Commission's website MCS language that was included in the website up to the date of the CFR publication cut-off date, but not thereafter.

2. Some provisions in the MCS expire on a date certain due to a sunset provision in the authorization. For instance, in First-Class, the Reply Rides Free Program description indicates the program expires December 31, 2011. In some cases, particularly for research and even billing and accounting purposes, it may not be desirable to remove the information about expired classifications and rates upon the first opportunity after expiration, particularly if updates to the website are frequent. It would be useful for the Commission to express its intentions and policy on retaining for a period of time prior to removing expired classification and price categories from the MCS after implementation of a sunset provision. Retaining such information in the MCS for at least one year after expiration and deleting it with the next update thereafter would

be helpful to mailers and other interested persons who wish to verify the terms and expiration date of the expired category of service or pricing.

C. SUGGESTED REVISIONS TO LANGUAGE IN RULES 3020.1-3020.5

1. Proposed rules 3020.1 and 3020.3 list some relevant sections of title 39 as the basis for the MCS schedule but do not refer to §404(e) of title 39 which lies outside of Chapter 36 as the basis for the nonpostal services to be listed in the MCS. For convenience, a copy of the proposed rules is attached at the end of these Comments with red line tracking of the suggested changes to add references to §404(e).

2. Section 3020.2 states only that the MCS consists of four parts A through D, and does not mention the Appendices that represent the bulk of the substantive material in the rules. Appendices A-D (not Parts), though critical, are not referenced until deep in the text of these rules at the end of subsections 3020.5(e)(2),(f)(2),(g) and (h). The Public Representative suggests that §3020.2 note that Part A has information “as specified in 3020.5(e) and Appendix A to this subpart”. Similarly, Part B has information “as specified in 3020.5(f) and Appendix B to this subpart,” and so on for Parts C and D for Appendices C and D.

3. The Public Representative suggests slight modification of some language of the rules in §§3020.1-3020-5 to state the rules in the present tense rather than the future tense. For instance, the rules tend to read in several, but not all places, that the rules “shall” state in the future rather than what they currently provide. If these are final rules, rather than proposals, they should state the rule in a declarative manner in the

present tense. The proposed rules attached at the end of these Comments include red line tracking of the suggested changes from future tense to the present tense.

4. Additional suggested minor word changes not discussed above are noted as red tracked changes in the proposed rules attached below.

D. SUGGESTED CHANGES IN SUBSECTIONS 3020.5(b)-(h) MCS

1. The Public Representative suggests for the Commission's consideration that the Revision History in Section 2030.5(b) list, in addition to the *Federal Register* reference, the relevant Commission Docket Numbers, Order Numbers and dates of Commission orders related to the revisions in that version. If the Commission frequently updates the website monthly or bimonthly, the list of orders included in each revision would be relatively short. Such a listing would provide a ready source to locate the history of modifications to the classification and price changes in the MCS. Language incorporating this change to the Revision History is tracked in red in the proposed rules included at the end of these Comments.

2. The citation for the MCS will be unwieldy unless it is standardized to a shorter version. A full reference to Appendix A, for instance, would be "Appendix A to Subpart A of Part 3020—Part A, Market Dominant Products. Persons unfamiliar with the details of the MCS will find this maze of Parts daunting. It appears from the Table of Contents that the use of two different "Parts" labels results from labeling the Market Dominant products as Part A and the Competitive products as Part B. That "Part" label conflicts and is easily confused with the designation "Part 3020." An alternative is to eliminate the Part designations for Part A and Part B labels for Market Dominant and

Competitive products. Also, Part C would be designated simply as Glossary and Part D as Country Price Lists.

III. CONCLUSION

The Public Representative respectfully submits the foregoing Comments for the Commission's consideration.

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The following proposed tracked changes reflect the changes proposed in the body of the Public Representative's Comments.

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Title 39: Postal Service
PART 3020—PRODUCT LISTS

Subpart A—Mail Classification Schedule

§ 3020.1 Applicability.

- (a) The rules in this part provide for establishing product lists. The product lists categorize postal products as either market dominant or competitive. As established, the market dominant and competitive product lists are specified in the Mail Classification Schedule and are consistent with the market dominant products identified in 39 U.S.C. 3621(a) and the competitive products identified in 39 U.S.C. 3631(a) and nonpostal services authorized by the Commission pursuant to 39 U.S.C. 404(e).
- (b) The Mail Classification Schedule may be modified subject to the procedures specified in this part.

§ 3020.402 General.

The Mail Classification Schedule consists of ~~two~~ introductory sections followed by four parts, A through D. The introductory sections include the MCS revision history, Postal Service trademark notice, and table of contents as specified in § 3020.5(b) through (d). ~~Part One A specify includes the list of market dominant products and include the explanatory information as specified in § 3020.43(a)5(e).~~ Part Two B specify includes the list of competitive products and include the explanatory information as specified in § 3020.43(b)5(f). ~~Part C includes a glossary of terms and conditions as specified in § 3020.5(g).~~ Part D includes country price lists for international products as specified in § 3020.5(h).

~~**§ 3020.11 Initial Mail Classification Schedule.**~~

~~The initial Mail Classification Schedule shall specify the market dominant and competitive product lists. The Mail Classification Schedule product lists shall reflect the market dominant and competitive product lists identified in 39 U.S.C. 3621(a) and 39 U.S.C. 3631(a) respectively. The explanatory detailed descriptive information specified in § 3020.13(a) and § 3020.13(b) shall be incorporated by subsequent rulemaking.~~

§ 3020.423 Publication of the Mail Classification Schedule.

- (a) The Mail Classification Schedule established in accordance with subchapters I, II, and III of chapter 36 and section 404(e) of Chapter 4 of title 39 of the United States Code and this subpart is

published in the *Federal Register* and includes the material specified in § 3020.5 of this subpart.~~appear as Appendix A to this subpart.~~

- (b) Availability of the Mail Classification Schedule. Copies of the Mail Classification Schedule,~~both current and previous issues,~~ are available during regular business hours for reference and public inspection at the Postal Regulatory Commission's Reading Room located at 901 New York Avenue, NW, Suite 200, Washington, DC 20268-0001. The Mail Classification Schedule,~~both current and previous issues,~~ also is available on the Commission's Internet website at <http://www.prc.gov>.

§ 3020.144 Notice of change.

Whenever the Commission modifies the list of products in the market dominant category or the competitive category,or modifies the supporting material provided within the Mail Classification Schedule, a notice of such change will be published in the *Federal Register*. The notice shall:

- (a) ~~Include~~Identify any modifications to the current list of market dominant products and the current list of competitive products appearing in the Mail Classification Schedule;
- (b) Indicate how and when the previous product lists have been modified; and
- (c) Describe other changes to the Mail Classification Schedule as necessary.

§ 3020.135 Contents of the Mail Classification Schedule.

~~The Mail Classification Schedule shall provide:~~

- (a) The items in paragraphs (b) through (h) of this section are included in the Mail Classification Schedule.

- (b) Revision History.

^ 2011

Revision of Mail Classification Schedule adding descriptions of new products (^Federal register cite^). Commission Docket Nos., Order Nos. and dates of product and price revisions.

^ ^, 2011

Comprehensive revision of Mail Classification Schedule adding descriptions of all products (^Federal Register cite^).

October 29, 2007

Initial release of the Mail Classification Schedule (72 FR 63662, November 9, 2007).